

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

Scherena Roshae Jackson,

DEBTOR

§ CASE NO.: 20-42160
§
§ CHAPTER 13
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OBJECTION TO CHAPTER 13 PLAN (DOCKET No. 3)

Comes now Carvana, LLC, its successors and assigns, (hereinafter “Secured Creditor”), a secured creditor in the above-entitled and numbered case, and files this Objection to Confirmation of Chapter 13 Plan, and in support thereof represents:

1. The above-styled Debtor filed a voluntary petition under Chapter 13 of Title 11, United States Bankruptcy Code on October 22, 2020.
2. On September 12, 2017, Debtor, Scherena Jackson, executed a Contract in favor of Movant in the original principal amount of \$19,657.56 (“Contract”).
3. The debt described by the Contract is secured by the 2010 Mercedes-Benz E-Class bearing the VIN: WDDHF8HB8AA138327 (the “Vehicle”). Furthermore, the Contract indicates that the Vehicle was purchased for personal use.
4. On October 27, 2020, Secured Creditor filed its proof of claim in the bankruptcy identified as claim #3-1 and evidencing a total claim of \$19,297.24 with \$10,875.00 of claim as secured and the remaining \$8,422.24 as unsecured, an interest rate of 24.04% and pre-petition arrears of \$1,569.00.

5. Debtor's Chapter 13 Plan (hereinafter "Plan") as proposed provides for Secured Creditor's claim to be paid directly at a secured claim with a valuation of \$7,025.00 at 5.00% over 36 months with monthly Pro-Rate payments.
6. Secured Creditor objects to confirmation of the Plan because:
 - a. Secured Creditor objects as the alleged value of the Vehicle within the plan at \$7,025.00. The Plan fails to ascribe the source of the Debtor's proposed valuation of the Vehicle. The Debtor's proposed value does not comport with the applicable standard under 11 U.S.C. § 506(a). Where a debtor proposes continued use of the property over the creditor's objection under § 1325(a)(5)(B) the proper application of § 506(a) utilizes a replacement value standard. *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 955 (1977). More specifically, when a debtor exercises the cram-down option under §1325(a)(5)(B), the value of the Vehicle (and thus the amount of the secured claim under §506(a) is the price a willing buyer in the debtor's circumstances would pay to obtain like property from a willing seller). *Id.* at 960. Secured Creditor has obtained an estimated value for the Vehicle according to NADA of \$10,875.00. A true and correct copy of the NADA report is attached as **Exhibit 1**.
 - b. Secured Creditor also objects to the Plan as Debtor's proposed 5.00% interest on the allowed secured claim is not appropriate. The appropriate rate of interest that should be provided in a Chapter 13 plan to compensate the secured creditor for the delay in receiving payments was addressed in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). A secured creditor who is paid the allowed amount of its claim over time must be paid interest post confirmation on its allowed secured claim. The

standard requires the Debtor to establish the national prime rate, adjusted upward for the risk of nonpayment.

- c. Debtor's desire for such a below market rate cannot be supported and cannot be said to provide fair and equitable treatment of secured claims. The proposed interest rate does not adequately compensate Secured Creditor for the risk inherent in the proposed Plan. The rate proposed is unquestionably far below the market rate and inappropriately applies the standard for setting an appropriate rate of interest. The risk of Debtor's default under the Plan is high, requiring a much higher interest rate. Debtor has failed to meet her payment obligations prior to filing the Petition. Consequently, Debtor's proposed Plan cannot be confirmed.
- d. The Plan does not provide any adequate protection payments pending plan confirmation to Secured Creditor. If the debt is secured by personal property, the plan payments *must* be sufficient to provide "adequate protection" to the creditor during the period of the plan (i.e., sufficient to cover insurance, depreciation, etc.). 11 USC § 1325(a)(5)(B)(iii)(II).
- e. The Plan does not provide for the payment of the pre-petition arrears in the amount of \$1,569.00.
- f. Finally, depending upon the appropriate interest rate and regular monthly payment to be paid to Secured Creditor, Debtor's plan may not be feasible. The court cannot confirm a Chapter 13 plan unless it finds that the debtor will be able to make all the proposed payments and to comply with the plan. In other words, the plan must be "feasible." 11 USC § 1325(a)(6). The debtor must have both the present and the future ability to make the proposed payments. *In re Street* (BC ND IL 1982) 17 BR

787, 788; see also *In re Pellegrino* (1st Cir. BAP 2010) 423 BR 586, 591—Chapter 13 case dismissed where below-median income debtors had insufficient income over minimum commitment period to make plan payments.

WHEREFORE, PREMISES CONSIDERED, Secured Creditor prays that this Court deny confirmation of the Plan, and grant it such other and further relief at law and in equity as is just.

Dated: November 13, 2020

Respectfully submitted,
GHIDOTTI | BERGER LLP

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EXHIBIT “1”

J.D. POWER



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2010 Mercedes-Benz E-Class Prices and Values

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Sedan 4D E350 AWD



Values & Cost Details ⁱ

Pricing

Cost to Own

Rough Trade-In

Base Price	\$4,775
Mileage (120,000)	\$525
Total Base	\$5,300
Options	N/A
	\$5,300

Average Trade-In

Base Price	\$6,700
Mileage (120,000)	\$525
Total Base	\$7,225
Options	N/A
	\$7,225

Clean Trade-In

Base Price	\$8,325
Mileage (120,000)	\$525
Total Base	\$8,850
Options	N/A
	\$8,850

Clean Retail

Base Price	\$10,350
Mileage (120,000)	\$525
Total Base	\$10,875
Options	N/A
	\$10,875

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Red E 350

Mileage: 27,335

Distance: 9 miles



Gray E 550

Mileage: 58,924

Distance: 9 miles



White E 550

Mileage: 94,082

Distance: 17 miles



Silver E 350

Mileage: 126,310

Distance: 19 miles



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Recommended Competitors

Recommended vehicles based on NADAguides.com audience feedback. The values listed below are based on MSRP and does not include any incentives, trade-in, options, or other adjustments.

2016 Mercedes-Benz E-Class



\$1,114/month
\$929 more

2021 Toyota Avalon



\$775/month
\$590 more

See Full Comparison

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Select from one or more dropdowns below, to find the right car for you. You can filter by car price, year, and make. For a more robust search, navigate to our official Car Finder Tool.

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Year

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Ford Edge

Toyota RAV4

Nissan Sentra

Ford Fusion

Lexus NX

Lexus RX

Dodge Journey

Ford Escape

Hyundai Tucson

2020 Ford Edge

2020 Toyota Corolla

2019 Dodge Journey

2019 Toyota Corolla

2019 Nissan Sentra

2019 Lexus NX

2018 Toyota RAV4

2017 Lexus RX

2017 INFINITI Q50

2017 Ford Fusion

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10 Most Popular Midsize SUVs ...

10 Most Popular Luxury Cars

Most Reliable Crossovers and S...

2019 Vehicle Dependability: Mo...

10 Most Popular Luxury SUVs a...

10 Most Popular Large SUVs an...

2019 Vehicle Dependability: Mo...

Cars By Price

Under \$15,000

\$15,000 - \$25,000

\$25,000 - \$35,000

\$35,000 - \$45,000

\$45,000 - \$55,000

\$55,000 - \$65,000

\$65,000 - \$75,000

Over \$75,000



On November 13, 2020 I served the following documents described as:

- **OBJECTION TO CHAPTER 13 PLAN**

on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

(Via United States Mail)

Debtor Scherena Roshae Jackson 7502 Bryn Mawr Dr Rowlett, TX 75089-2014 US Trustee Office of the U.S. Trustee 110 N. College Ave. Suite 300 Tyler, TX 75702	Debtor's Counsel Nathanael Steven Graham Graham Legal, PLLC 8501 Wade Blvd #340 Frisco, TX 75034 Chapter 13 Trustee Carey D. Ebert P. O. Box 941166 Plano, TX 75094-1166
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xx (By First Class Mail) At my business address, I placed such envelope for deposit with the United States Postal Service by placing them for collection and mailing on that date following ordinary business practices.

 Via Electronic Mail pursuant to the requirements of the Local Bankruptcy Rules of the Eastern District of California

xx (Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 13, 2020 at Santa Ana, California

/s / Brandy Carroll
Brandy Carroll